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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBY RAY POLLARD,

Defendant and Appellant.

B208666

(Super. Ct. No. MA040295)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa M. Chung, Judge. Affirmed.

Bobby Ray Pollard, in pro. per.; Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted appellant Bobby Ray Pollard of carrying a concealed dirk or dagger. (Pen. Code, § 12020, subd. (a)(4).) Appellant admitted a prior serious or violent felony conviction within the scope of the Three Strikes Law. The trial court sentenced him to a second strike term of six years.

Los Angeles County Sheriff’s deputies stopped appellant as he was walking in the street at about 2:00 a.m. Appellant looked at the deputies, retrieved a foot-long fixed blade knife from under his jacket, and dropped the knife onto the pavement.

Appellant filed a timely appeal. We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. On December 26, 2008, we advised appellant he had 30 days within which to personally submit any contentions or issues he wished us to consider.

Appellant filed a supplemental letter brief arguing his trial attorney rendered ineffective assistance by failing to believe that appellant was innocent, failing to make a *Pitchess*<sup>1</sup> motion, failing to conduct a reasonable investigation and a vigorous defense, and arguing “the case and facts in support of the prosecution side during the *Marsden*<sup>2</sup> hearing.”

A claim that counsel was ineffective requires a showing, by a preponderance of the evidence, of objectively unreasonable performance by counsel and a reasonable probability that, but for counsel’s errors, appellant would have obtained a more favorable result. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216-218.) Appellant must overcome presumptions that counsel was effective and that the challenged action might be considered sound trial strategy. (*In re Jones* (1996) 13 Cal.4th 552, 561.)

An attorney need not believe his or her client is innocent in order to satisfy the standard of providing constitutionally effective representation. Appellant cannot

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<sup>1</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

demonstrate from the appellate record that but for counsel’s failure to file a *Pitchess* motion or his alleged failure to conduct an investigation and perform the unspecified acts appellant believes were necessary for a “vigorous defense,” appellant would have obtained a more favorable result. Moreover, appellant has not, and on the appellate record cannot, overcome the presumptions that these alleged omissions were sound tactical decisions by counsel. We have reviewed the transcript of the *Marsden* hearing and find that appellant’s accusation is factually unsupported. Moreover, appellant has failed to show any likelihood he would have obtained a more favorable result absent counsel’s statements to the court during the *Marsden* hearing.

We have also examined the entire record and are satisfied that appellant’s counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

### **DISPOSITION**

The judgment is affirmed.

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WEISBERG, J.\*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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\* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.